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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

SEP 22 2006

at 1 o'clock and 40 min. P.M.
SUE BEITIA, CLERK

Attorneys for Defendant/Limitation Plaintiff

MORNING STAR CRUISES, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

In the Matter of)	CV. NO. 03-00672 SOM-BMK
)	
The Complaint of MORNING STAR)	
CRUISES, INC., a Hawaii corporation.)	
)	
<u>SHIROH FUKUOKA, Individually and</u>)	CV. NO. 04-00588 SOM-BMK
as Personal Representative of THE)	
ESTATE OF MITSUKO FUKUOKA,)	[CONSOLIDATED]
and as Next Friend of MIHO)	
FUKUOKA, a Minor,)	AFFIDAVIT OF GREGORY K.
)	MARKHAM RE: MOTION TO
Plaintiffs,)	DISMISS PLAINTIFFS' CLAIMS
)	AND FOR ATTORNEY'S FEES
vs.)	AND COSTS; CERTIFICATE OF
)	SERVICE

ORIGINAL

MORNING STAR CRUISES, INC., a)
Hawaii corporation; JOHN DOES 1-) Hearing: 9/22/06
10, JANE DOES 1-10, DOE) Time: 2:00 p.m.
CORPORATIONS 1-10, DOE) Magistrate/Judge: Barry M. Kurren
PARTNERSHIPS 1-10, DOE JOINT)
VENTURERS 1-10, DOE LIMITED) Trial: February 21, 2007
LIABILITY ENTITIES 1-10, DOE) Time: 9:00 a.m.
NON-PROFIT ENTITIES, 1-10, DOE) Judge: Hon. Susan Oki Mollway
GOVERNMENTAL ENTITIES 1-10,)
DOE UNINCORPORATED)
ENTITIES 1-10, and OTHER DOE)
ENTITIES 1-10,)
)
Defendants.)
)
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)

**AFFIDAVIT OF GREGORY K. MARKHAM RE: MOTION TO DISMISS
PLAINTIFFS' CLAIMS AND FOR ATTORNEY'S FEES AND COSTS**

STATE OF HAWAII)
 : SS.
CITY AND COUNTY OF HONOLULU)

GREGORY K.MARKHAM being first duly sworn on oath, deposes
and says that:

1. I am an attorney licensed to practice law in the State of Hawaii.
2. I am a partner with the law firm of Chee & Markham, attorneys for Defendant/Limitation Plaintiff Morning Star Cruises, Inc. in the above-captioned matter.
3. I have personal knowledge of and am competent to testify concerning the matters set forth below.
4. An Order Granting Defendant/Limitation Plaintiff's Motion to Compel Discovery was filed June 6, 2006.
5. Plaintiff/Limitation Defendant failed to comply with the Motion to Compel Discovery filed June 6, 2006.
6. On July 12, 2006, Morning Star Cruises, Inc. filed a Motion to Dismiss Plaintiff's Claims and For Attorney's Fees and Costs pursuant to the Federal Rules of Civil Procedure, Rule 37 for failure to cooperate in discovery.

7. That Affiant has reviewed the billing statements of July through August 2006, and timesheets for September 2006 for attorneys fees incurred in making its Motion to Dismiss.

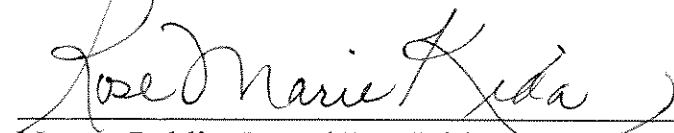
8. That to the best of Affiant's knowledge and belief, and upon review of the billing statements of July through August 2006, and timesheets for September 2006, and based on an hourly rate of \$135.00 an hour, Morning Star has incurred attorney's fees in the amount of \$2,065.50 in bringing it's Motion to Dismiss.

9. Therefore, attorneys for Morning Star are requesting sanctions of reasonable attorneys' fees incurred by Morning Star in a total amount of \$2,065.50 as permitted by Rule 37 of the Federal Rules of Civil Procedure.

FURTHER AFFIANT SAYETH NAUGHT.


GREGORY K. MARKHAM

Subscribed and sworn to before me
this 22th day of September, 2006.

L.S. 
Notary Public, In and For Said State
Name Printed: RoseMarie Kida

My Commission Expires: 9/5/07

CERTIFICATE OF SERVICE

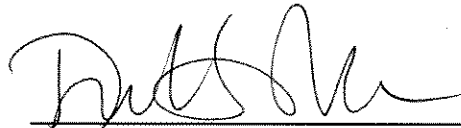
The undersigned hereby certifies that a copy of the foregoing document was duly served upon the below-identified party at their respective address by means of hand-delivery on September 22, 2006.

ROBERT D. KAWAMURA, ESQ.

550 Halekauwila Street., Suite 106
Honolulu, Hawaii 96813

Attorney for Plaintiffs/Limitation Defendants
SHIROH FUKUOKA, Individually and as
Personal Representative of THE ESTATE OF
MITSUKO FUKUOKA, and as Next Friend
of MIHO FUKUOKA, a Minor

DATED: Honolulu, Hawaii, September 22, 2006.



GREGORY K. MARKHAM

KEITH K. KATO

DESIREE HIKIDA MOKUOHAI

Attorneys for /Defendant Limitation
Plaintiff **MORNING STAR CRUISES,
INC.**